

## **TRANSACTION SERVICES AGREEMENT**

This Transaction Services Agreement (this “**Agreement**”) is entered into by and between Testy Treats with an address at 1020 Goodlette Rd N, Naples, FL 34102, United States (“**Customer**” or “**you**”) and Horizon Business Services, Inc., a Florida corporation, with its principal office at 801 Orchid Drive, Naples, Florida 34102 (“**Horizon**”), and is effective as of 02-Feb-2022 (“**Effective Date**”). Customer and Horizon may be referred herein collectively as the “**Parties**” and individually as a “**Party**.”

**WHEREAS**, the Parties have entered into a [Services Agreement] effective as of 02-Feb-2022 (“**Services Agreement**”) pursuant to which Horizon provides Customer with certain services.

**WHEREAS**, the Parties desire to enter into an additional agreement whereby Horizon will provide the payment transaction services set forth in Exhibit A to Customer (“**Transaction Services**”).

**NOW THEREFORE**, for good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

### **1. Transaction Services and Agreement to WePay Terms.**

(a) Horizon uses WePay, Inc. (“**WePay**”), a subsidiary of JPMorgan Chase Bank, N.A. (“**Chase**”), to facilitate its Transaction Services. In order for you to use WePay’s payment processing services, you must register with WePay as a merchant. By using the Transaction Services, you acknowledge and agree to comply with WePay’s Terms of Service available at <https://go.wepay.com/terms-of-service-us/> and <https://go.wepay.com/terms-of-service-canada/> (as applicable), which are incorporated into this Agreement by reference. For purposes of the WePay Terms of Service, Customer is the “Merchant” and Horizon is the “Platform.” The WePay Privacy Policy is available here: <https://go.wepay.com/privacy-policy>. By accepting this Agreement, you agree that you have reviewed the WePay Terms of Service and Privacy Policy for the country in which you are located and agree to them. If you have questions regarding the WePay Terms of Service or Privacy Policy, please refer to the WePay website [www.wepay.com](http://www.wepay.com).

(b) For payments by card, Horizon initiates the payment process by providing information to Paymentech, LLC, a Delaware limited liability company (“**Paymentech**”). Paymentech is a subsidiary of Chase which is a member of Visa U.S.A., Inc., Visa International (“**Visa**”), Mastercard International Incorporated (“**MasterCard**”), American Express Travel Related Services Company Inc. (“**American Express**”), or other payment card networks, associations, or companies (collectively, the “**Card Networks**”). Paymentech in its capacity as an authorized processor of transactions and Chase in its capacity as a member of several Card Networks are referred to collectively as the “**Bank**”.

(c) Horizon shall pay, or cause the Bank to pay, Customer under both (a) the provisions of this Agreement and WePay’s Terms of Service, and (b) the by-laws, operating regulations and all other rules, policies and procedures of the Card Networks as in effect from time to time (the “**Card Network Rules**”), that make Horizon responsible for instructing settlement with you as a Merchant. For payments by bank transfer, Horizon initiates the payment process by providing information to Chase through the National Automated Clearing House (“**ACH**”) in accordance with all applicable laws, regulations and The Electronic Payments Association Operating Rules and Guidelines (“**ACH Rules**”), each as in effect from time to time.

## 2. **Customer Responsibilities.**

(a) Access Credentials. Customer must provide an e-mail address and password to enable Customer to access Customer's payment account and use the Transaction Services. Customer may be required to provide additional information such as street address, telephone number, tax identification number (such as Social Security Number), and date of birth. Customer will restrict access to such access credentials and account to Customer's employees and agents as may be reasonably necessary consistent with the purposes of this Agreement and will ensure that each such employee and agent accessing and using the account is aware of and otherwise complies with all applicable provisions of this Agreement regarding such use and access. Customer is solely responsible for maintaining adequate security and control of any and all usernames, passwords, or any other codes for purposes of giving Customer access to the Transaction Services.

(b) Confirmation of E-mail Address. Customer must provide accurate and complete information. Specifically, when register, you must demonstrate that you can receive email at the email address you provide. If you do not confirm your email address, then (a) fourteen (14) days after you accept your first payment, you will not be able to accept additional payments, and (b) thirty (30) days after you accept your first payment, the Bank will refund to your purchasers all of the payments you have accepted. In addition, in order to settle the payments you have accepted to your bank account or other payment instrument, you must provide to Horizon identity and settlement information (such as your bank account details). If you do not provide identity and settlement information, then (a) thirty (30) days after you accept your first payment, you will not be able to accept additional payments, and (b) unless you provide identity and settlement information promptly, the Bank will refund to your purchasers all of the payments you have accepted. Finally, if at any time Horizon is unable to verify that the identity information you provided is correct and up-to-date, then, unless you provide verifiable information promptly, (a) Horizon will disable your Account so that you cannot accept additional payments, and (b) the Bank will refund to your purchasers all of the payments that you have accepted but not settled. Neither the Bank, Horizon, nor its third-party service providers will have any liability to you for your inability to accept payments or for refunds pursuant to this paragraph.

(c) Compliance. Customer must use the Transaction Services in a lawful manner, and must comply with all laws, rules, and regulations applicable to Customer's use of the Transaction Services, including but not limited to the Payment Card Industry Data Security Standards. Customer is prohibited from using the Transaction Services to facilitate illegal transactions. Customer must abide by the applicable Card Network Rules and ACH Rules. For example, where you accept payment cards on your website, you will display each card's logo with equal size and prominence, and you shall not display a preference for, or discriminate against, one card brand over another. You expressly acknowledge and agree that you are assuming the risk of compliance with all provisions of the Card Network Rules and ACH Rules, regardless of whether you have possession of those provisions. You agree to reimburse Horizon and the Bank for all fines, fees, penalties, liabilities, or other charges or assessments by a Card Network, the ACH or other payment network relating to your actions or your transactions ("**Payment Network Liabilities** "). The Card Networks make excerpts of their respective Card Network Rules available on their websites (including [usa.visa.com](http://usa.visa.com), [www.mastercard.com](http://www.mastercard.com), [www.americanexpress.com](http://www.americanexpress.com) and [www.discover.com](http://www.discover.com)).

3. **E-Sign Disclosure and Consent.** By accepting this Agreement, you agree and consent to receive electronically all communications, agreements, documents, notices and disclosures (collectively, "**Communications** ") that Horizon provides in connection with your account and your use of the Transaction Services. Communications include but are not limited to: agreements and policies, such as this Agreement and our Privacy Policy, including updates

thereto; annual disclosures; transaction receipts or confirmations; communication in relation to delinquent accounts (which may also be by phone, and may be made by Horizon or by anyone on its behalf, including a third party collection agent); account statements and history; and federal and state tax statements (we may, but are not obligated to, send tax-related information electronically). Horizon will provide these Communications to you by emailing them to you at the primary email address listed in your account registration, by texting them to you at the primary telephone number listed in your account registration, by emailing or texting you a link or instructions how to access them on a website. Horizon may also provide certain Communications (such as federal and state tax statements) by U.S. mail to the street address listed in your account registration. Communications are considered received by you within 24 hours of the time they are emailed or mailed to you. You further agree that your electronic signature has the same effect as your manual, physical signature. You may withdraw your consent to receive Communications electronically by contacting Horizon. If you withdraw your consent to receive Communications electronically, Horizon may deny your registration for an account, restrict or close your account, or charge you additional fees for paper copies.

4. **ACH Payment Authorization** . You authorize Horizon and the Bank to initiate electronic ACH debit and credit entries to each bank account that you set up and to initiate adjustments for any transactions credited or debited in error. You agree to be bound by the ACH Rules and you agree that all ACH transactions that you initiate will comply with all applicable laws. Your authorization will remain in full force and effect until you notify us that you revoke it by contacting us or by closing your account. You understand that Horizon requires a reasonable time to act on your revocation, not to exceed five (5) business days. You authorize Horizon to instruct the Bank to hold, receive, disburse and settle funds on your behalf. Subject to this Agreement, you also authorize Horizon to instruct the Bank to debit or credit any bank account or other payment instrument that you link to your Account, to initiate adjustments for any transactions credited or debited in error, as well as for chargebacks, reversals, or claims in accordance with this Agreement, the Card Network Rules and ACH Rules. Horizon may use Plaid, Inc. ("**Plaid** ") to gather your data from financial institutions. When you set up a bank account and input your online banking credentials for instant verification, you are granting Plaid the right, power and authority to access and transmit your personal and financial information from your financial institution. You agree to your personal and financial information being transferred, stored, and processed by Plaid in accordance with the Plaid Privacy Policy available at <https://plaid.com/legal/>.

5. **Accepted Forms of Payment.** The Transaction Services support most domestic and international credit, debit, prepaid or gift cards with a Visa, MasterCard, American Express or Discover logo. We may add or remove support for certain payment cards at any time without prior notice. We may elect only to process cards that receive an authorization from the applicable issuer. You agree to accept all of the cards issued by Card Networks that the Transaction Services support in accordance with the terms of this Agreement. The Transaction Services also supports payments via ACH from U.S.-based purchasers with a U.S. bank account to U.S.-based merchants. Horizon may conduct verification checks on purchasers to ensure account ownership and sufficient balance, and we may refuse to process payments from purchasers at our discretion.

6. **Sharing Information.** We may share some or all of the information about you and your transactions with the Bank, the Card Networks, and our other service providers (and their respective affiliates, agents, subcontractors, and employees), who may use this information to perform their obligations under their agreements with Horizon, to operate and promote their respective networks, to perform analytics and create reports, to prevent fraud, and for any other lawful purpose. American Express and other Card Networks may use your name, address, and website address (URL) in any media from time to time. At any time, Horizon, the Bank, the Card Networks or our other service providers may conclude that you will not be

permitted to use the Transaction Services. You agree that Horizon is permitted to contact and share information about you and your account with the Bank, the Card Networks, other financial institutions, and government agencies. This includes sharing information (a) about your transactions for regulatory or compliance purposes, (b) for use in connection with the management and maintenance of the Transaction Services, (c) to create and update their customer records about you and to assist them in better serving you, (d) for use in connection with their agreement with us, to operate and promote their business, perform analytics and create reports, and for any other lawful business purpose, and (e) to conduct risk management.

7. **Reserve.** At any time and from time to time, Horizon may instruct the Bank to temporarily suspend or delay payments to you and/or require a "Reserve" to protect Horizon and the Bank against the risks from you using the Transaction Services, including chargebacks, refunds, and Payment Network Liabilities. A "Reserve" is funds the Bank may withhold from you or require you to pay or obtain from any bank account or other funding source associated with any Account you hold with Horizon and which the Bank maintains to protect Horizon and the Bank against a risk that we or the Bank reasonably anticipate. Horizon will notify you of the amount of any required Reserve, which Horizon and the Bank will determine in good faith. The Bank will hold and control any required Reserve. The Reserve will not bear interest, and the Bank can commingle the Reserve with other funds. You have no interest in any Reserve other than a contingent right to receive any unused funds. Horizon may periodically instruct the Bank to increase your required Reserve, or return Reserve funds no longer needed to manage your risk. When Horizon and the Bank decide a Reserve is no longer needed, the Bank will return all unused Reserve funds to you. The right to require a Reserve will survive termination of this Agreement. This means that this Section 7 will remain in force even if you or we terminate the Agreement.

8. **Accounts.** You are not required to have funds in your Account in order to use the Transaction Services. Any funds in your account will be co-mingled and held by the Bank with other merchants' funds in one or more pooled accounts at the Bank that are established in the Bank's name for the benefit of you and other users. The Bank has sole discretion over the establishment and maintenance of any pooled account. As consideration for using the Transaction Services, you irrevocably assign to Horizon or the Bank all rights and legal interests to any interest and/or other earnings or benefits that may accrue or are attributable to the Bank holding your funds in a pooled account. If your account is negative for an extended period of time (as defined by Horizon in its sole discretion), the Bank may close your account, and Horizon may pursue legal action or other collection efforts.

9. **Refunds and Returns.** You agree to process returns of, and provide refunds and adjustments for goods or services through your account in accordance with this Agreement, the Card Network Rules and the ACH Rules. The Card Network Rules require that you will (a) maintain a fair return, cancellation or adjustment policy, (b) disclose your return or cancellation policy to purchasers at the time of purchase, (c) not give cash refunds to a purchaser in connection with a payment card sale, unless required by law, and (d) not accept cash or any other item of value for preparing a payment card sale refund. Your refund policies must be the same for all payment methods. If your purchaser is dissatisfied with your refund policy, the purchaser may chargeback the payment.

10. **Liability for Chargebacks.** The amount of a payment may be charged back to you if (a) it is disputed by a purchaser, (b) it is reversed for any reason, (c) it was not authorized or we have any reason to believe that the transaction was not authorized, or (d) it is unlawful, suspicious, or in violation of the terms of this Agreement. You are responsible for all chargebacks, whether or not the chargeback complies with the Card Network Rules. You are also responsible if a purchaser reverses a payment by bank transfer, whether or not the reversal complies with the ACH Rules.

## **11. Handling of Chargebacks .**

(a) You owe the Bank and will immediately pay the amount of any chargeback or ACH reversal and any associated fees, fines, or penalties assessed by the Bank, the Card Networks or the ACH. If you do not have sufficient funds in your account, Horizon and the Bank will have the remedies set forth below in Section 12, Set-off and Collection Rights; Grant of Security Interest. If you have pending chargebacks or reversals, the Bank may delay settlement to you.

(b) Further, if we reasonably believe that a chargeback or reversal is likely with respect to any transaction, the Bank may withhold the amount of the potential chargeback or reversal from payments otherwise due to you under this Agreement until such time that: (a) a chargeback or reversal is assessed due to a purchaser's complaint, in which case the Bank will retain and refund the funds; (b) the period of time under applicable law or regulation by which the purchaser may dispute that the transaction has expired; or (c) we determine that a chargeback or reversal on the transaction will not occur.

(c) If we determine that you are incurring an excessive amount of chargebacks or reversals, Horizon or the Bank may establish controls or conditions governing your account, including without limitation, by (a) assessing additional fees, (b) creating a Reserve in an amount reasonably determined by us to cover anticipated chargebacks, reversals and related fees, (c) delaying settlement, and (d) terminating or suspending the Transaction Services or closing your account.

(d) You agree to assist Horizon when requested, at your expense, to investigate any of your transactions processed through the Transaction Services. To that end, you permit Horizon to share information about a chargeback or reversal with the purchaser, the purchaser's financial institution, and your financial institution in order to investigate and/or mediate a chargeback or reversal. Horizon will request necessary information from you to contest the chargeback or reversal. If the chargeback or reversal is contested successfully, the Bank will release the reserved funds to you. If a chargeback or reversal dispute is not resolved in your favor by the Card Networks, ACH or issuing bank or you choose not to contest the chargeback or reversal, the Bank may recover the chargeback or reversal amount and any associated fees as described in this Agreement. You acknowledge that your failure to assist Horizon in a timely manner when investigating a transaction, including providing necessary documentation within seven (7) days of a request, may result in an irreversible chargeback or reversal. Horizon reserve the right, upon notice to you, to charge a fee for mediating and/or investigating chargeback and reversal disputes.

## **12. Set-off and Collection Rights; Grant of Security Interest.**

(a) The Bank can, without notifying you or making a demand for payment retain, apply or set off any amount owed you by Horizon or the Bank or the value of any of your property in the possession of Horizon or the Bank, against any amount you owe Horizon or the Bank for any obligation irrespective of whether Horizon or the Bank has made any related demand (even if it is unmatured). All fees are deducted first from the transferred or collected funds and thereafter from your Account. If you do not have sufficient funds, the Bank may collect from any funding source associated with your account, or from any other account under your control, or from any funding source associated with such other account, including but not limited to any funds (a) deposited by you, (b) due to you under this Agreement, or (c) available in your bank account or other payment instrument registered with Horizon. Your failure to pay in full amounts that you owe on demand will be a breach of this Agreement. You will be liable for Horizon's costs associated with collection in addition to the amount owed, including without limitation attorneys' fees and expenses, collection agency fees, and interest



at the lesser of one-and-one-half percent (1-1/2%) per month or the highest rate permitted by law. In its discretion, Horizon may make appropriate reports to credit reporting agencies and law enforcement authorities and cooperate with them in any resulting investigation or prosecution. You hereby expressly agree that all communication in relation to delinquent accounts will be made by email, by text or by phone, as provided by you to Horizon. Such communication may be made by Horizon or a third party collection agent.

(b) You assign and grant the Bank a security interest in and lien on any and all funds held in your account and any other funds and credits with the Bank, including without limitation any Reserve under Section 7 above, and also authorize the Bank to make any withdrawals or debits from the Reserve, without prior notice to you, to collect amounts that you owe us or the Bank under this Agreement, including without limitation for any reversals of settlements or transfers made to your account. You will execute any additional documentation required for the Bank to perfect its security interest. You irrevocably assign to the Bank all rights and legal interests to any interest or other earnings that accrue or are attributable to funds subject to this security interest.

**13. Fees; Taxes.**

(a) Service Fees. Customer shall pay to Horizon the fees set forth in Exhibit A (“**Fee Schedule**”). The fees include charges for transactions connected with Customer’s account. Horizon reserves the right to change fees at any time in its sole discretion. Horizon will try, but is not required, to give Customer 30 days’ notice before the effective date of any change in a fee. By continuing to use the Transaction Services, Customer consents to the change in fees. To withdraw your consent, you must close your account.

(b) Taxes. The fees described above are exclusive of all taxes. You are responsible for determining any and all taxes assessed, incurred, or required to be collected, paid, or withheld, in connection with your use of the Transaction Services. You are solely responsible for collecting, withholding, reporting and remitting any taxes to the appropriate tax authority. Horizon is not obligated to, and will not, determine whether taxes apply, or calculate, collect, report or remit any taxes to any tax authority arising from your use of the Transaction Services.

**14. Billing Terms.** Billing shall begin on the Effective Date. Fees are due and payable to Horizon on a monthly basis, and the first payment shall be due on the first day of the month immediately following the billing effective date. Unless otherwise specified herein, fees and payments for any subsequent time periods shall be due on the first day of the month. Payments will be made in U.S. Dollars.<sup>[1]</sup>

**15. Unauthorized or Illegal Use.** Horizon may refuse, condition, or suspend any transactions that it believes: (i) may violate this Agreement or the [Services Agreement]; (ii) are unauthorized, fraudulent or illegal; or (iii) expose Customer, Horizon, or others to risks unacceptable to Horizon. If Horizon suspects or knows that Customer is using or have used the Transaction Services for unauthorized, fraudulent, or illegal purposes, Horizon may share any information related to such activity with the appropriate financial institution, regulatory authority, or law enforcement agency consistent with Horizon’s legal obligations. This information may include information about Customer, Customer’s account, and Customer’s transactions made through Customer’s use of the Transaction Services.

**16. Security of Transactions.** Horizon has implemented and will maintain security systems for the transmission of Customer’s transactions, consisting of encryption and firewall technologies that provide adequate security for the transmission of such information over the Internet. Horizon does not guarantee the security of the Transaction Services or transaction

data, and Horizon will not be responsible in the event of any infiltration of its security systems, provided that Horizon has used commercially reasonable efforts to prevent any such infiltration. Customer further acknowledges and agrees that Customer, and not Horizon, is responsible for the security of transaction data or information or any other information stored on Customer's servers, and that Horizon is not responsible for any other party's servers (other than subcontractors of Horizon solely to the extent Horizon is liable for its own actions hereunder).

17. **Data Protection.** Customer acknowledges and agrees that in the course of providing the Transaction Services, Horizon will capture certain transaction and user information (collectively, "**Data**"). Customer agrees to provide to Horizon, and Horizon shall capture, only the Data that is necessary for Horizon provide the Transaction Services. Customer represents and warrants that Customer has provided notice to, and obtained consent from, any third party individuals whose Data Customer supplies to Horizon as part of the Transaction Services with regard to: (i) the purposes for which such third party's personal data has been collected, (ii) the intended recipients or categories of recipients of the third party's personal data, (iii) which parts of the third party's data are obligatory and which parts, if any, are voluntary; and (iv) how the third party can access and, if necessary, rectify the data Customer holds about them. Customer further agrees to provide such notice and obtain such consent with regard to any third party personal data Customer supplies to Horizon in the future. Horizon is not responsible for any consequences resulting from Customer's failure to provide notice or receive consent from such individuals nor for Customer's providing outdated, incomplete or inaccurate information.

18. **IP Ownership and License.** As between Customer and Horizon, Horizon and its licensors exclusively own all rights, title, and interest in the patents, copyrights (including rights in derivative works), moral rights, rights of publicity, trademarks or service marks, logos and designs, trade secrets, and other intellectual property embodied by, or contained in the API used to access the Transaction Services and the Transaction Services (collectively, "**Horizon IP**"). Horizon IP is protected by copyright, trade secret, patent, and other intellectual property laws, and all rights in Horizon IP not expressly granted to Customer in this Agreement are reserved. Subject to the terms of this Agreement, Horizon hereby grants to Customer and Customer hereby accepts from Horizon a limited, non-exclusive, non-transferable license to access and use the Horizon IP only in the manner described in this Agreement.

19. **Term and Termination.** This Agreement is effective upon the Effective Date and continues until terminated in accordance with the [Services Agreement]. Horizon may terminate this Agreement at any time for any reason (including, without limitation, for any activity that may create harm or loss to the goodwill of a payment method) by providing Customer notice. Horizon may suspend Customer's account and Customer's ability to access funds in Customer's account, or terminate this Agreement, if (i) Horizon determines in its sole discretion that Customer is ineligible for the Transaction Services because of significant fraud or credit risk, or any other risks associated with Customer's account; (ii) Customer uses the Transaction Services in a prohibited manner or otherwise does not comply with any of the provisions of this Agreement; (iii) any law or payment method provider requires Horizon to do so; or (iv) Horizon is otherwise entitled to do so under the [Services Agreement]. In the event Customer terminates this Agreement prior to the expiration of the term, Customer shall pay to Horizon ten percent (10%) of the fees owed by Customer during the remaining months of the term.

20. **Effects of Termination.** Upon termination, all rights and obligations of the Parties under this Agreement shall be extinguished except all payment obligations hereunder shall

survive. All other provisions of this Agreement that are intended to survive termination shall survive.

## **21. Representations and Warranties; Disclaimers.**

(a) Mutual Warranties. Each Party represents and warrants to the other that (a) it has all necessary right, power and ability to execute this Agreement and to perform its obligations therein; (b) no authorization or approval from any third party is required in connection with such party's execution, delivery or performance of this Agreement, (c) this Agreement constitutes a legal, valid and binding obligation, enforceable against it in accordance with its terms, and (d) the Party's obligations under this Agreement do not violate any law, policy or regulation or breach any other agreement to which such Party is bound.

(b) Customer Warranties. You represent and warrant that: (a) you are eligible to register and use the Transaction Services and have the right, power, and ability to enter into and perform this Agreement; (b) the name identified by you when you registered is your name or business name under which you sell goods and services; (c) any sales transaction submitted by you will represent a bona fide sale by you; (d) any sales transactions submitted by you will accurately describe the goods and/or services sold and delivered to a purchaser; (e) you will fulfill all of your obligations to each purchaser for which you submit a transaction and will resolve any consumer dispute or complaint directly with the purchaser; (f) you and all transactions initiated by you will comply with all federal, state, and local laws, rules, and regulations applicable to your business, including any applicable tax laws and regulations; (g) except in the ordinary course of business, no transaction submitted by you through the Transaction Services will represent a sale to any principal, partner, proprietor, or owner of your entity; (h) you will not use the Transaction Services, directly or indirectly, for any fraudulent undertaking or in any manner so as to interfere with the use of the Transaction Services; (i) your use of the Transaction Services will be in compliance with this Agreement; and (j) you are not a "Bearer Share Company" (defined following) and you do not have any outstanding and will not issue any new "Bearer Shares" (defined following). "Bearer Share Company" means a type of company which, unlike registered share companies, issues its securities as Bearer Shares. "Bearer Shares" means securities that are not registered in the name of the owner on the books of the issuing corporation and thus payable to any possessor of the shares.

(c) DISCLAIMERS. THE TRANSACTION SERVICES ARE PROVIDED ON AN "AS IS," "AS AVAILABLE" BASIS WITHOUT ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND. HORIZON DOES NOT REPRESENT OR WARRANT THAT THE TRANSACTION SERVICES WILL BE AVAILABLE, ACCESSIBLE, UNINTERRUPTED, TIMELY, SECURE, ACCURATE, COMPLETE, OR ENTIRELY ERROR-FREE. HORIZON SPECIFICALLY DISCLAIMS ALL REPRESENTATIONS, WARRANTIES, AND CONDITIONS WHETHER EXPRESS OR IMPLIED, ARISING BY STATUTE, OPERATION OF LAW, USAGE OF TRADE, COURSE OF DEALING, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO, WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR TITLE WITH RESPECT TO THE TRANSACTION SERVICES. CUSTOMER UNDERSTANDS AND AGREES THAT HORIZON SHALL BEAR NO RISK WITH RESPECT TO CUSTOMER'S SALE OF PRODUCTS OR SERVICES, INCLUDING, WITHOUT LIMITATION, ANY RISK ASSOCIATED WITH CARD FRAUD OR CHARGEBACKS.

## **22. LIMITATIONS OF LIABILITY.**



(a) UNDER NO CIRCUMSTANCES (I) WILL HORIZON OR ANY OF ITS PARENTS, AFFILIATES OR VENDORS (OR ANY OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS OF THE PARTIES, OR ITS PARENTS, AFFILIATES OR VENDORS) BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGE OR LOSS SUFFERED OR INCURRED BY CUSTOMER, REGARDLESS OF THE FORM OF ACTION, OR ANY LOSS OF REVENUE, PROFITS OR BUSINESS, ANTICIPATED SAVINGS, LOSS OF GOODWILL OR REPUTATION, COSTS OF DELAY, LOST OR DAMAGED DATA, OR THE INCURRING OF LIABILITY FOR LOSS OR DAMAGE OF ANY NATURE WHATSOEVER, ALL WHETHER IN CONTRACT, STRICT LIABILITY OR TORT (INCLUDING NEGLIGENCE), REGARDLESS OF WHETHER IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; OR (II) WILL HORIZON'S TOTAL AGGREGATE LIABILITY TO CUSTOMER UNDER THIS AGREEMENT EXCEED THE GREATER OF THE AGGREGATE COMPENSATION HORIZON RECEIVED FOR PROVIDING THE TRANSACTION SERVICES TO CUSTOMER DURING THE SIX (6) MONTHS PRECEDING THE DATE ON WHICH THE CLAIM AROSE. NOTHING IN THIS AGREEMENT SHALL BE DEEMED TO EXCLUDE OR LIMIT LIABILITY THAT CANNOT BE EXCLUDED OR LIMITED AS A MATTER OF LAW.

(b) EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, CUSTOMER EXPRESSLY AGREES THAT HORIZON SHALL NOT BE LIABLE FOR ANY LOSS ARISING FROM OR RELATED TO: (A) FRAUDULENT TRANSACTIONS PROCESSED THROUGH CUSTOMER'S PAYMENT ACCOUNT; (C) DISRUPTION OF THE TRANSACTION SERVICES, SYSTEMS, SERVER OR WEBSITE BY ANY MEANS; (D) ACTIONS OR INACTIONS BY ANY THIRD PARTY, INCLUDING WITHOUT LIMITATION, PAYMENT NETWORKS OR BANKS; OR (E) THE LIMITATION OF THE FUNCTIONING OF ANY TRANSACTION SERVICES OR SOFTWARE, HARDWARE, OR EQUIPMENT ASSOCIATED THEREWITH.

## 23. Indemnification.

### (a) Indemnification by Horizon.

(i) Horizon shall defend, indemnify and hold Customer and any of Customer's officers, directors, agents and employees harmless from and against any and all third party claims, actions, proceedings, and suits and all related liabilities, damages, settlements, penalties, fines, costs or expenses (including reasonable attorneys' fees and other litigation expenses) incurred by Customer, arising out of or relating to any alleged infringement of a U.S. patent or copyright of any other entity or person by the Transaction Services.

(ii) Horizon's obligations in Section 23(a)(i) do not apply if: (i) the Transaction Services have been modified by parties other than Horizon; (ii) the Transaction Services are used in conjunction with data where use with such data gave rise to the infringement claim; (iii) Customer's failure to install upgrades or patches provided by Horizon where such upgrade or patch would have removed the infringing condition; or (v) Customer's use of the Transaction Services with software or hardware not authorized by Horizon, where use with such other software or hardware gave rise to the infringement claim. If the Transaction Services or any component thereof becomes, or in Horizon's opinion is likely to

become, the subject of a claim of infringement, then Customer shall permit Horizon, at Horizon's sole option and expense, either to (i) procure for Customer the right to continue using the Transaction Services as permitted in this Agreement, or (ii) replace or modify the affected Transaction Services or infringing component so that it becomes non-infringing. If, after using commercially reasonable efforts, Horizon is unable to cure the infringement, either party may immediately terminate this Agreement. THIS SECTION STATES THE ENTIRE LIABILITY OF HORIZON TO CUSTOMER WITH RESPECT TO INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS BY THE TRANSACTION SERVICES.

(b) Indemnification by Customer. Customer shall defend, indemnify, and hold harmless Horizon and its affiliates, parents, and/or subsidiaries, and any of their officers, directors, agents and employees, from and against any and all claims, actions, proceedings, and suits and all related liabilities, damages, settlements, penalties, fines, costs or expenses (including reasonable attorneys' fees and other litigation expenses) incurred by Horizon, arising out of or relating to (a) any breach or alleged breach by Customer of any representation, warranty, or obligation of Customer set forth in this Agreement; (b) any damage or loss caused by negligence, fraud, dishonesty or willful misconduct by Customer or any of Customer's employees, agents or customers; (c) the reliability, accuracy, or legitimacy of payment data or purchase orders submitted by Customer to Horizon; (d) payment card transactions submitted by Customer to Horizon and rejected by Horizon or an issuing bank; (e) any alleged infringement of a patent, copyright, trademark or other intellectual property right resulting from Customer's actions; (f) claims relating to the disclosure consumer data; or (g) any alleged or actual violation by Customer of any applicable laws, regulations, the Card Network Rules or any regulatory body or agency having jurisdiction over the subject matter hereof. In the event Customer causes fines and/or penalties to be charged to Horizon by the applicable Card Networks or any other entity, Customer agrees to immediately reimburse Horizon for said fines or penalties.

#### 24. **Miscellaneous.**

(a) Governing Law. This Agreement, and any disputes arising hereunder, shall be governed by the laws of the state of Florida, United States, without regard to its conflicts of law principles.

(b) Independent Contractors. Both parties shall be, and shall act as, independent contractors. Neither party shall have authority to create any obligation or make any commitments on the other party's behalf.

(c) Notices. All notices to Customer shall be given electronically, sent to the e-mail address provided by or for Customer. All notices to Horizon shall be sent electronically to HORIZON E-MAIL ADDRESS GOES HERE .

(d) Assignment. This Agreement is not assignable by Customer except with Horizon's prior written consent, and any such assignment in violation hereof is void. Horizon may transfer and assign any of its rights and obligations under this Agreement without consent.

(e) Force Majeure. No delay, failure, or default by Horizon, will constitute a breach of this Agreement to the extent it results of causes beyond the reasonable control of Horizon, including acts of war, terrorism, weather, acts of God or nature, strikes, labor disputes, riots, civil disorder, embargo, internet outage, health crisis, pandemic, earthquake or the like.

(f) Waiver. Neither party shall be deemed to have waived any of its rights under this Agreement by lapse of time or by any statement or representation other than by an authorized representative in an explicit signed, written waiver. No waiver of a breach of this Agreement by either party will constitute a waiver of any other breach of this Agreement.

(g) Severability. In the event a court of competent jurisdiction finds any provision of this Agreement invalid or unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and if the foregoing is not possible, such provision shall be severed from the Agreement. All remaining provisions shall continue in full force and effect.

(h) Entire Agreement. This Agreement (including any other agreements referenced herein) constitutes the entire agreement between the parties with regard to the subject matter herein and supersede all prior or contemporaneous negotiations, discussions, understandings or agreements between the parties. Neither party has relied upon any such prior or contemporaneous communications. Any amendment or modification to this Agreement must be in writing and signed by the authorized representatives of both parties to be effective.

## **EXHIBIT A**

### **Description of Transaction Services:**

#### **Fee Schedule**

Interchange Plus (IC+) Rate (per transaction):  $1.25\% + 0.10$   
ACH Entered Charges:  $0.85\% + 0.25$

#### **Refund Policy:**

1. Interchange Plus (IC+) fees for credit card payments will only be credited back to Customer *if* they are credited back by the network
  - Payers will receive a full refund, but Customer will need to cover fees if the network does not credit them back
  - *This varies by network; some do refund their fees while others do not*
2. IC+ fees are not applicable to ACH/eCheck payments, so the entire fee charged will **not** be credited back to Customer
3. Platform markup fees will **not** be refunded to Customer

- *Customer pays the platform markup fees at the end of the billing cycle, discussed [here](#)*
  - *Similarly, fees debited from the platform do not get credited back to the platform*
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